

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

(240) 777-6600

APPEAL OF WILLIAM and DIANE DEVANY

Case No. A-5674

OPINION OF THE BOARD
(Hearing held January 9, 2002)
(Effective date of Opinion: March 28, 2002)

Case No. A-5674 is an administrative appeal in which the appellant charges administrative error on the part of the Department of Housing and Community Affairs (DHCA) in the issuance of its Notice of Violation letters of June 1, July 25 and September 10, 2001, regarding residential building and maintenance code violations at 12652 Black Saddle Lane, Germantown, Maryland.

A public hearing was held pursuant to Sections 26-14(b) and 26-8 of the Montgomery County Code. The Appellants, William and Diane Devany (the "Devanys" or "Appellants") represented themselves. Richard H. Melnick, Esquire, represented Montgomery County, Maryland. Testifying in support of the appeal were both of the Devanys. Testifying in opposition to the appeal was Wright A. Jolly, Jr., Housing Code Inspector II at DHCA.

Decision of the Board: Administrative appeal **denied**.

EVIDENCE PRESENTED

1. The subject property is a townhouse located at 12652 Black Saddle Lane, Germantown, Maryland, owned by William Devany. DHCA first became aware of the violations at the property when the inspector visited the property in response to a May 14, 2001, complaint of overcrowding at the premises.

2. William Devany has a license to rent the property to others for single family use.

3. Appellants acknowledge that they are experienced with landlord-tenant issues, and that William Devany was a commissioner who heard cases with the Office of Landlord Tenant Affairs for six years.

4. Appellants knew the tenant was "an HOC person" at the time they rented the property to her. They desired to lease the premises to the tenant, accepted the tenant's rental payments, and agreed to comply with HOC rules and regulations. Appellants' lease with the tenant also specified their right as landlord to enter and repair the premises.

5. The DHCA inspector observed conditions constituting violations of Chapter 26 of the County Code during inspections on May 21, 2001, July 18, 2001, and August 31, 2001.

6. Accordingly, the DHCA inspector properly sent notices of violation, in compliance with Sections 26-8 and 26-14 of the County Code.

7. In particular, DHCA sent letters dated June 1, 2001 (with Addendum A, noting seven violations it had observed, along with the particular Code sections that had been violated), July 25, 2001 (with Addendum B, noting seven additional violations it had observed, along with the particular Code sections that had been violated), and September 10, 2001 (noting the status of violations in the previous letters).

8. Appellants agree, and do not contest, that at all times relevant to the notices of violation the subject premises were inhabited by their tenants.

9. Appellants agree, and do not contest, that the observations of the DHCA inspector were correct and accurate, and that the conditions described by the DHCA inspector did exist at the time of inspection.

10. Appellants agree with, and do not contest, nine (9) of the 14 violations noted by the DHCA inspector. However, Appellants contend that the five (5) conditions described as violations at items 3, 4, 5, 6, and 7 of Addendum B to the July 18, 2001, notice of violation and order to comply letter are not violations under §26-8 of the County Code.

11. Regarding the only violations Appellants place at issue, which are the above five violations noted in **Addendum B**, the preponderance of the evidence of record, through the testimony and documents (including photographs) of both the Appellants and the County, demonstrates the following:

a. Item #3 - Light globe covers on the second level were missing. The absence of light globe covers created a bright glare emanating from the light bulb that negatively impacts on a person's eyes as they enter that area of the house. The absence of the light globe covers constitutes a failure to maintain safe and effective functioning of the equipment, and a failure to maintain the light fixture in a satisfactory working condition, in violation of §26-8(i) of the County Code.

b. Item #4 - Two additional light globe covers on the basement level were missing. The absence of the light globe covers creates a bright glare emanating from the light bulb that negatively impacts on a person's eyes as they enter that area of the house. The absence of the light globe covers constitutes failure to maintain safe and effective functioning of the equipment, and failure to maintain the light fixture in a satisfactory working condition, in violation of §26-8(i) of the County Code.

c. Item #5 - Several areas of the walls in the basement were damaged. These walls also had flaking and peeling paint, along with loose plaster, as a result of both the damage and some attempt at repair work that was done improperly. Furthermore, the holes in the walls themselves resulted in flaking and peeling paint, or the absence of paint. These conditions are violations of §26-8(h) of the County Code.

d. Item #6 - The dining room walls appeared to have been crushed in, and someone had attempted to put some loose plaster or putty over the damaged areas. This resulted in loose putty or plaster, peeling paint, and a cracked seam in the wall around the area of the flaking and peeling paint. These conditions are violations of §26-8(h) of the County Code.

e. Item #7 - Paint was peeled off of the front door area inside (which was the living room area) and outside. Loose plaster was coming apart, and flaking and peeling paint was present on the damaged walls throughout the entire living room area, all in violation of §26-8(h) of the County Code.

12. Under §§26-1 and -8 of the County Code, the owner of the property is responsible for building and maintenance conditions that violate §26-8 of the County Code, even if a tenant on the premises causes the conditions resulting in the violation.

FINDINGS OF THE BOARD

1. The only violations at issue are those noted at Addendum B, items 3, 4, 5, 6, & 7.

2. The preponderance of the evidence of record demonstrates that: the DHCA inspector observed all of the conditions he noted in each notice of violation and order to comply (including those conditions noted at Addendum B, items 3, 4, 5, 6 & 7); each of those conditions constituted violations of §26-8 of the County Code at the time each notice of violation and order to comply was issued; and, the DHCA inspector properly identified each violation, the Section of the Code that was violated, and the corrective action required of Appellants in each notice of violation and order to comply letter that he issued.

3. The owner of the property is responsible for the violations, and the corrective action required to remedy the violations.

4. Each notice of violation and order to comply was properly issued at the time it was issued.

5. The appeal is, therefore, **DENIED**.

On a motion by Angelo M. Caputo, seconded by Donald H. Spence, Jr., Chairman, with Louise L. Mayer, Donna L. Barron and Allison Ishihara Fultz in agreement, the Board adopts the following Resolution:

BE IT RESOLVED, by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28th day of March, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2A-10(f) of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.